IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HON'BLE THE CHIEF JUSTICE MR.H.L.DATTU
&
THE HONOURABLE MR. JUSTICE HARUN-AL-RASHID

WEDNESDAY, THE 1ST AUGUST 2007 / 10TH SRAVANA 1929

WA.No. 1893 of 2007

AGAINST THE JUDGEMENT IN WPC.21224/2007 Dated 10/07/2007
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APPELLANT: PETITIONER:

TRESA PRESILLA JACOB,
MALABAR AGRO PRODUCTS, KANJIRAPUZHA P.O.,PALAKKAD.

BY ADV. SRI.VIJAYAN. K.U.
SRI.K.N.SREEKUMARAN

RESPONDENTS: RESPONDENTS:
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1. COMMERCIAL TAX OFFICER (AA),
O/O. THE ASSISTANT COMMISSIONER (AA),
COMMERCIAL TAXES, PALAKKAD.

2. STATE OF KERALA,
REPRESENTED BY SECRETARY TO GOVERNMENT,
TAXES DEPARTMENT, GOVERNMENT SECRETARIAT,
THIRUVANANTHAPURAM.

BY SENIOR GOVERNMENT PLEADER SRI MUHAMMED RAFIQ

THIS WRIT APPEAL HAVING COME UP FOR ADMISSION ON 01/08/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

H.L. DATTU, C.J. & HARUN-UL-RASHID, J.

W.A.No.1893 of 2007

Dated, this the 1st day of August, 2007

JUDGMENT

H.L. DATTU, CJ.

Petitioner in W.P.(C) No.21224/2007 has filed this appeal, being aggrieved by the orders passed by the learned Single Judge in the aforesaid writ petition.

2. In the writ petition, the petitioner had called in question the orders passed by the Commercial Tax Officer (AA) for the assessment period 2005-06 under section 24(1) of the KVAT Act, 2003 and also the order passed levying penalty under the Act.

3. Aggrieved by those two orders the assessee was before this court in the writ petition.

4. In our opinion the learned Single Judge ought to have rejected the writ petition solely on the ground that the petitioner has an alternate, effective and efficacious remedy under the Act itself. Without exhausting that remedy, the petitioner could not approach this court. Without doing so the learned Judge has proceeded to decide the case on merits.

5. Aggrieved by the aforesaid order passed by the learned Single Judge, the petitioner is before us in this appeal. In fact, the order passed by the learned Single Judge is more helpful to him. But such an order is questioned in this appeal. We do not intend to encourage this type of writ appeals. Since we are not in agreement with the order passed by the learned Single Judge the imlpugned order requires to be set aside and the appellant should be relegated to approach the appropriate forum, if he is aggrieved by the orders passed by

the assessing authority. Accordingly the following:-

Order

we set aside the order passed by the learned Single Judge and direct the assessee to file an appropriate appeal if he is aggrieved by the orders of assessment passed by the assessing authority for the assessment year 2005-06 under the provisions of the KVAT Act, 2003 and also against the levy of penalty for the very same year before the first appellate authority within a month's time from today. If such an appeal is filed within the time so granted, the appellate authority shall decide the appeal on merits without reference to the period of limitation. Ordered accordingly.

H.L. DATTU,
CHIEF JUSTICE.

HARUN-UL-RASHID,
JUDGE.

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